United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

BRIEF FOR APPELLANT

In The
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

NO. 18,792

FRED NORMAN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

871

Appeal from the United States District Court for the
District of Columbia

Denver H. Graham
1314 - 19th Street, N. W.
Washington, D. C.
Court Appointed Attorney
for Appellant

APPELLANT'S STATEMENT OF QUESTIONS PRESENTED

1. Did the Court err in admitting Appellant's alleged oral confession into evidence?

2. Was there sufficient corroboration of the claimed statutory rape to sustain the conviction?

INDEX

TABLE OF CITATIONS

CASES:

* Cases chiefly relied upon are marked by asterisks.

IN THE

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,792

FRED NORMAN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Appeal from the United States District Court for the District of Columbia

---

BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

This is an appeal from a conviction of carnal knowledge. The jurisdiction of this Court was conferred by an Order Per Curiam dated June 25, 1964.

STATEMENT OF THE CASE

Appellant was indicted for violation of Tile 22, § 2801, District of Columbia Code, 1961 Edition (carnal knowledge of a female child under sixteen years of age). He entered a plea of not guilty (R. 1), and was tried before Judge Richmond B. Keech and jury on October 9 and 10, 1963. He was found guilty and the jury asked for leniency (TR. 114). Judge Keech sentenced Appellant to imprisonment for a period of from one (1) to five (5) years (R. 1).

The female involved was 11 years old (TR. 5). She testified that around noon on May 30, 1963 she was playing in her back yard (TR. 6) and went into the house to give her baby brother a bottle (TR. 8). Appellant went into the house with her, pulled her down on the bed and pulled her underclothes down. He pulled out "His dick" and stuck it in her (TR. 10). Her sister came into the room and hit Appellant on the back with a stick. He got up and left (TR. 11). The complaining witness' mother was at the beach and when she returned that evening the police were called and the minor was taken to District of Columbia General Hospital (TR. 12).

On cross-examination the complaining witness testified that a 14 year old boy by the name of Paul Sessoms was also at her home and volunteered the information that he also had sexual relations with her that day in her mother's boyfriend's car (TR. 14).

The complaining witness' 10 year old sister testified that she saw her sister and Appellant in her mother's bedroom, (TR. 21). Appellant was on top of her sister (TR. 24). She never testified that she saw his private parts, but hit him with a stick (TR. 25). He stood up and left (TR. 26).

Complaining witness' mother testified that she came home about 7:00 P.M. on May 30, 1963, and talked with her (TR. 29). She called the police and took her daughter to D. C. General Hospital (TR. 30).

Officer William R. Holden testified that he was assigned to the Sex Squad of the Metropolitan Police Department (TR. 34) and investigated the occurrence. At 10:15 A.M. on June 1, 1963 he talked to Appellant at police headquarters. The Appellant appeared voluntarily, after having been notified to come there. He told Appellant of the complaint made against him and at first he denied having done anything to the minor (TR. 36).

At this point Judge Keech excluded the jury and heard the testimony of the officer in its absence. He testified that Appellant first denied having sexual relations with the minor, but upon being informed that witnesses had seen him, Appellant admitted relations with her after she had consented (TR. 39). Appellant admitted this about 10:35 A.M. (TR. 40). He testified that he placed Appellant under arrest at 10:15 A.M. (TR. 40-41).

On cross-examination he admitted that Appellant was technically under arrest when he came into headquarters and that nothing Appellant would have said would have caused him to change his mind (TR. 41). Appellant was promised nothing and the officer didn't remember if he told Appellant whether he had to make a statement or not (TR. 42).

Over Appellant's Attorney's objection, the oral confession was admitted into evidence (TR. 43) and the witness was allowed to testify in the presence of the jury. He admitted the Appellant was in his custody after he arrived at the Sex Squad Office and that while he talked with Appellant other people were processing the papers for his arrest (TR. 46).

Dr. Ilse Hillgood testified that she was an interne at D. C. General Hospital and examined the complaining witness on the evening of May 30, 1963 (TR. 52). Physical examination showed she was dirty and soiled around the vagina and was red, as if there had been some irritation. The external vagina (introitus vagina) was red (TR. 53). No evidence of sperm or semen was found. There was much common dirt in the vagina (TR. 54) as if it had been placed there (TR. 55). She could not express an opinion as to what type of trauma caused the irritation (TR. 56).

The government rested (TR. 59) and Appellant's motion for judgment of acquittal was overrulled (TR. 60).

Appellant, who was 18 years old at the time of the trial, (TR. 61) then took the stand. He lived one block from complaining witness. He denied having sexual relations with her (TR. 64). A Sergeant Kline from the police department came to his house and "sort of made a threat" for him to go to the Police Department. He went there and a policeman asked if he had relations with the complaining witness. Appellant replied in the negative (TR. 66). The policeman kept asking more questions and Appellant finally told him he was going to leave. The policeman said, "Hold it, you aren't going nowhere." (TR.67).

On cross-examination, Appellant testified that the policeman who came to his house told him that if he didn't come to police headquarters "there would be an amount of guilt on my part" (TR. 69). He also testified that the policeman hit him on the side of his head and made him sign a piece of paper. He didn't know what was written on the paper (TR. 70). He denied ever confessing the crime either orally or in writing (TR. 71). He denied being at complaining witness' house on the date of the alleged occurrence (TR. 73), and denied ever having relations with her (TR. 75).

On re-direct examination Appellant testified that on the date of the alleged occurrence, namely May 30, the Appellant came out of his house between 3:30 and 4:00 P.M. and saw a large number of boys gathered down by the alley. He went there and saw Paul Sessoms at 1854. [Note: Complaining witness lived at 1852 - 5th Street, N. W. (TR. 28)]. Appellant went across the street and stood there talking to Paul and was invited into his house, where he met Paul's sister. He saw complaining witness and her sister running up and down the alley playing (TR. 83). A short while later, complaining witness' mother and two men, one being her boyfriend, came to

Paul's house. The man talked to Paul and the mother pointed and said, "He is the one of them right there." One man started hitting Appellant, but the other broke it up (TR. 84). Appellant rested.

Detective William R. Holden was first called by the government for rebuttal. He denied hitting Appellant and testified that the only paper Appellant could possibly have signed was his fingerprint card. He did not get a signed confession from him (TR. 90). He did not threaten or coerce Appellant (TR. 92).

Joyce Platt was also called in rebuttal. She is a detective assigned to the Sex Squad (TR. 93). Appellant arrived at the office, having been expected because he was told the night before to come in. She made up a "line-up sheet" while he was being interviewed. Appellant told the police he wasn't too sure why he had been asked to come in (TR. 94). At first, Appellant said the girl "instigated this thing herself". Then he revised that when the police told him the girl said "it had been on his own volition, that he pushed the girl down on the bed and done this." (TR. 95). Appellant said that they had discussed sexual relations in the kitchen and she agreed to have them with him. They went

to the bedroom and started when the sister came in and hit him. Appellant was never hit by anyone and was confronted with the girl and her mother. He was in the office until about 11:50 o'clock (TR. 96). Appellant never signed any paper in her presence (TR. 97).

STATUTE INVOLVED

Title 22, § 2801, District of Columbia Code, 1961 Edition:

> "Whoever has carnal knowledge of a female forcibly and against her will, or carnally knows and abuses a female child under sixteen years of age, shall be imprisoned for not more than thirty years: PROVIDED, That in any case of rape the jury may add to their verdict, if it be guilty, the words 'with the death penalty,' in which case the punishment shall be death by electrocution: PROVIDED FURTHER, That if the jury fail to agree as to the punishment the verdict of guilty shall be received and the punishment shall be imprisonment as provided in this section."

STATEMENT OF POINTS

The Appellant relies on the following Points on appeal:

I. The Trial Court erred in admitting an oral confession into evidence that had been secured from an 18 yeard old boy who had not been advised of his rights to counsel, of his right not to say anything, or the fact that anything he said could be used against him.

II. If the confession had been excluded the conviction could not stand, because the alleged crime was not corroborated.

SUMMARY OF ARGUMENT

The Court committed reversable error in allowing the police officers to testify about thc alleged oral confession made by Appellant, who had been asked the night before to come to police headquarters the next morning. He went there voluntarily, was not told he was under arrest, and was not advised of any of his rights, including the right to remain silent or to consult an attorney.

The complaining witness testified that Appellant made penetration. Her sister, who was supposedly an eye witness, never saw Appellant's private parts. The doctor who examined the complaining witness did not testify there was any evidence of penetration. There was evidence of some trauma on the introitus vagina, which is external to the vagina. This doesn't necessarily connect Appellant even to the "trauma", since complaining witness volunteered the information that she had had sexual relations with another boy that day.

Since the confession should be excluded, then the entire conviction should be reversed, because it could only be based upon the uncorroborated testimony of an 11 year old minor.

A R G U M E N T

I. THE TRIAL COURT SHOULD HAVE EXCLUDED APPELLANT'S ALLEGED ORAL CONFESSION.

Appellant, an unsophisticated 18 year old youth, with no previous criminal record was asked by the police to go to the police station. He went there voluntarily and was questioned by a police officer about facts which constituted a capital offense and for which he could have been sentenced to die. At no time either before the questioning started or while it was going on was he informed by the interrogating officer that he was under arrest, yet the police officer testified that Appellant was technically under arrest when he came into the police headquarters and that nothing Appellant would have said would have caused the officer to change his mind and release him (TR. 41). At no time did the police officer advise the minor that he was under arrest and that he did not have to make a statement or that he could have the services

of an attorney, and that anything he said could be used against him. Instead, one officer questioned him while another officer was preparing the papers to process him with finger prints, photograph, etc.

The questioning that went on in this case was similar to that conducted in the case of Spriggs v. United States of America, _____ U.S. App. D.C. _____, _____ F.2d. _____, (United States Court of Appeals for the District of Columbia Circuit No. 17962, decided June 19, 1964). In that case, the Defendant Spriggs was arrested, booked and was then taken up-stairs for questioning while the officers were filling out the forms. There was affirmative testimony that the Defendant was advised that he need make no statement and that if he did it would be used against him. This Court excluded the confession in that case because of the questioning that went on while the forms were being filled out. The only difference with the case at bar is that while the present Appellant was consider-ed to be under arrest by the police, he was not notified to that effect nor was he advised of his rights. That fact alone should be sufficient to justify the exclusion of the oral confession.

The case at bar differs from the recent decision in the case of Ramey vs. United States of America, _____ U.S. App. D.C. _____, _____ F.2d. _____, (United States Court of Appeals for the District of Columbia Circuit, No. 17,774 decided June 25, 1964). In that case the Court allowed a confession to be introduced into evidence which was made within a few minutes after Appellant's arrest and in response to routine inquiries as to what had happened. It refused to consider reversal because no objection had been made at the time of the trial to the introduction of the statements because they had not been preceded by a warning to Appellant that they might be used against him. In the case at bar, an objection to the admissibility of the oral confession was made by Appellant's Attorney (TR. 43).

Appellant's present attorney sees little difference in the procedure followed by the police in the present case and that followed by the police in the recently decided case of Greenwell v. United States of America, _____ U.S. App. D.C. _____, _____ F.2d. _____, (United States Court of Appeals for the District of Columbia Circuit No. 18,193, decided August 13, 1964). In that case the police officers arrested the

Defendant and put him in a police vehicle. While en route to the police headquarters, the officers parked the car, talked to the Defendant, and secured a confession from him. This Court excluded the confession even though it had been preceded by the police officer's "own substitute for a magistrate's advice as to his rights". In the case at bar, the officers talked to the Appellant at the police headquarters while his forms were being typed up, but never even advised him that he was under arrest. There was no pretext at even giving the present Appellant the police officer's version of magistrate's advice.

This Court excluded a written confession in the case of Carter v. United States of America, 102 U.S. App. D.C. 227, 252 F.2d. 608, because the Defendant was not advised of his right to counsel or the right not to speak, even though such advice was recited in the opening paragraph of the written confession signed by the Defendant in that case.

The absence of even perfunctory advice as to constitutional guarantees in this case demand reversal. It is difficult to comprehend that a Metropolitan policeman would dare to interrogate a juvenile concerning a capital offense without giving some admonition to him.

II. WITHOUT THE ALLEGED CONFESSION, THE CONVICTION SHOULD BE REVERSED BECAUSE THE ALLEGED CRIME WAS NOT CORROBORATED.

The only testimony that proves the element of penetration, which is essential for statutory rape, is the testimony of the 11 year old complaining witness. Her sister, an eye witness, does not confirm that there was any penetration, or, indeed, does not even confirm that Appellant's private parts were ever in view.

The medical examination conducted by an employee of the District of Columbia Government, Dr. Ilse Hillgood, on the day of the alleged statutory rape does not confirm penetration, but only shows that the complaining witness' introitus vagina was very dirty and soiled and red from irritation. The introitus vagina is the entrance external to the interior of the vagina. (Stedmen's Medical Dictionary, Unabridged Lawyers' Edition, 1961 Edition, Page 783). This testimony does not corroborate any rape and besides, the complaining witness freely admitted that some other boy had had sexual relations with her on the same day.

It is entirely conceivable that because of the young age and naivete of the complaining witness that she really

doesn't know what sexual intercourse is. The least the government could have done in this case was to present some evidence that the complaining witness was not a virgin and that somebody or something had in fact made penetration through the complaining witness' hymen at some time prior to the examination by the government doctor.

In the case of Holmes v. United States of America, 84 U.S. App. D. C. 168, 171 F.2d. 1022, this Court said:

> "There can be no dispute that by definition it is fundamental that penetration by the male organ is necessary to constitute the crime of rape or carnal knowledge. But, by the overwhelming weight of authority, it is not necessary to prove full penetration. The crime of rape is committed if it enters only the labia of the female organ."

The Court is referred to Pages 1379 and 1380 of Gray's Anatomy of the Human Body, 27th Edition, 1962, wherein a description of the female external genital organs is given. Unfortunately, the government doctor did not use the nomenclature set forth in the anatomy book, but simply referred to the irritation as being in the introitus vagina. However, there was no testimony by the doctor that there had been any penetration of either the labia majora or the labia minora,

which would be sufficient to prove penetration, the essential element of the crime.

C O N C L U S I O N

It is respectfully submitted that the Trial Court erred in the admission of the oral confession and that the conviction should be reversed because of the lack of corroboration.

Respectfully submitted,

Denver H. Graham
1314 - 19th Street, N. W.
Washington, D. C.
Court Appointed Attorney
for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this _____ day of _____, 1964, I mailed, postage prepaid, a copy of the foregoing Brief for Appellant to David C. Acheson, Esq., United States Attorney, Attorney for United States of America, Appellee, United States Courthouse, Washington, D. C.

_____

BRIEF FOR APPELLEE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,792

FRED NORMAN, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the United States District Court for the District of Columbia

---

DAVID C. ACHESON,
United States Attorney.

FRANK Q. NEBEKER,
ROBERT B. NORRIS,
DANIEL J. MCTAGUE,
Assistant United States Attorneys.

QUESTIONS PRESENTED

1. Whether, in a carnal knowledge case, there was evidence other than that of the complaining witness to corroborate her testimony that appellant had had intercourse with her?

2. Whether appellant's admission that he had had sexual relations with the complaining witness, an admission made within 45 minutes of his voluntary arrival at police headquarters, was admissible against appellant?

INDEX

TABLE OF CASES

* Cases chiefly relied upon are marked by asterisks.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,792

FRED NORMAN, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the United States District Court for the District of Columbia

---

BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

On August 12, 1963, an indictment was filed in the District Court charging appellant, who was 18 years of age, with carnal knowledge of one Barbara Ann Veney, who had just passed her 11th birthday. After trial by jury before Judge Richmond B. Keech, appellant was found guilty with a jury request for leniency (Tr. 114). On November 16, 1963 he was sentenced to imprisonment for one to five years. This appeal followed.

The complaining witness, Barbara Ann Veney, testified that on May 30, 1963, at about 12 o'clock noon, she had

been in the backyard of her house at 1852 - 5th Street, N.W. (Tr. 6). Her sister, Bernadette Veney, and one of her brothers were also in the yard at the time appellant came into the yard. She testified that another brother, a baby, was crying in the house and she went into the house and gave him his bottle. Appellant entered the house with her. Appellant tried to get her on the couch and she ran to her mother's bedroom. There appellant pulled her on the bed, pulled her underclothes down, and "pulled himself out". By this she explained she meant he pulled out "his dick." Then she testified "he stuck himself in me" and that he stayed in her "one minute." Then her sister Bernadette came in and hit him with a stick on his back. Appellant got up and left. (Tr. 6-11).

Barbara's mother was not home at the time but when she returned home later in the afternoon she called the police and Barbara was taken to D. C. General Hospital where she was examined.

On cross-examination Barbara testified, evidently to the surprise of appellant's trial counsel, that one Paul Sessons, age 14, had had sexual relations with her in a car on the same day (Tr. 14).

Barbara's sister Bernadette, a 10-year old, testified that on the day in question she had been playing in the backyard and that she had then gone into the house where she saw her sister and appellant in their mother's bedroom. Appellant and Barbara were on the bed, appellant on top of Barbara. Barbara's underpants were down. When asked what clothes appellant had on, she testified, "his underpants." Then she said "his underpants and his pants." She had seen these. His trousers were open. When she was asked whether she had seen any part of him or anything "in the open part of his trousers" she said, "Yes, sir." She said she remembered what she saw but after unproductive questions this line of questioning ended. When asked, "What did you do when you saw what you saw?" she said, "I hit him with a stick." (Tr. 19-25.)

Barbara's mother testified that the girl had been born on May 10, 1952. She said that when she arrived home on May 30, 1963 about 7 o'clock she spoke with Barbara and as a result took down Barbara's pants and examined her. She called the police and with the police went with Barbara to D. C. General Hospital. The next day she and Barbara went to the office of the Sex Squad at about 10 o'clock. (Tr. 28-32.)

Detective William R. Holden, a member of the Metropolitan Police Department Sex Squad, testified that he had talked to Barbara and her mother at their home at about 8:30 p.m. on May 30, 1963, and had taken them to D. C. General Hospital. He said that appellant was notified to be at the office of the Sex Squad the following morning. (Tr. 34-36.)

At a hearing outside the presence of the jury, Detective Holden testified that after appellant arrived at 10:15, he told appellant about the complaint that had been made against him and at first appellant denied having anything to do sexually with the girl. He was told that there were witnesses who had seen him and he then admitted that he had had relations with the girl. He said that she offered him a glass of water and they went into the house where they had a conversation about sex relations. He asked her if he could have relations with her and she said yes. He said that they had had relations on the bed and while there, her sister had hit across his back with a stick and he then left the house. (Tr. 38-43.)

Detective Holden said that this whole procedure had taken about 20 minutes. While it was going on, appellant "was being processed in the necessary papers" . . . "to have him fingerprinted and photographed." (Tr. 39-43.) The judge ruled that the statement was admissible and Detective Holden testified to substantially the same matters before the jury (Tr. 43-46).

At a later point in the trial, Detective Joyce Platt, a policewoman assigned to the Sex Squad, testified that appellant came into the office at about 10:15 and sat down next to her desk where she and Detective Holden inter-

viewed him. At the same time she was "making a line-up sheet on him, asking him his full name, address and things like that, and then asking him if he know why he had been asked to come to the office." When asked what appellant said, Detective Platt answered:

> "Well, he said he wasn't too sure, or something to that effect. And we explained to him the charge that was against him. And at first he said that the girl had instigated this thing herself. And then he revised that within a few minutes, when we told him that we had talked with the child and we had talked with another witness and they had said that it had been of his own volition, that he pushed the girl down on the bed and done this. (Tr. 94-95)

She also said:

> "Well, he then said that he had had sexual relations with the girl but they had been discussing it just prior to when it happened; they had gone in the kitchen and were talking—talking about sexual relations, in fact, he said; and he asked her if she would have sexual relations with him and she said yes and they went in the bedroom and began having sexual relations and her sister came in there and hit him. (Tr. 96)

About a half hour after appellant arrived at the Sex Squad office, about 10:45, Barbara and Mrs. Veney were brought into the presence of appellant and he left the office at about 11 o'clock.

Detective Holden was asked by the Court whether he had told appellant "whether he had to make a statement or not." Holden replied, "I don't recall that, Your Honor." (Tr. 42.) At that time, according to the testimony of Detective Holden, Barbara repeated her version of what had happened and appellant repeated his (Tr. 44-45).

Doctor Ilse Hillgood, an interne at D.C. General Hospital, testified that she had examined the complaining witness on the evening of May 30, 1963. She said that her examination disclosed that Barbara "was very dirty and

soiled, around the introitus vagina. And next she was red, as if there had been some . . . irritation." She described the introitus as being the first part of the vagina. (Tr. 53.) Later she described the irritation as being "due to trauma of some sort." She was not able to give an opinion as to "what type of trauma" (Tr. 56.)

Appellant testified in his own defense. He stated that he was 18 years old and had ended his schooling at the 8th grade. He lived one block from the house of the complaining witness. Around noon of May 30, 1963, he said he was at home. He denied having sexual relations with the complaining witness and said that he had been to her house on only one occasion, not the day in question. (Tr. 61-64.)

Appellant said that on the evening of May 30, Sergeant Kline came to his house and "in a way of speaking, he sort of made a threat [for appellant] to come down to the Metropolitan Police Department." Appellant said that on the next day he saw Barbara and her mother outside the office of the Sex Squad, that he went into the office and there Detective Holden asked him what all this trouble that Holden heard appellant was in was all about. Appellant said, "What trouble?" Holden replied, "about Barbara." And Holden said "that she accused [appellant] of having sexual relations with her." Holden asked appellant if that was true. Appellant told him no. Holden kept asking appellant questions. Appellant said that after Holden finished asking him a few questions appellant said he would be leaving and going home. Then, according to appellant, Holden said, "hold it, you ain't going nowhere." He said Holden would not let him leave and told appellant "I want you to sign this paper right here." Appellant refused to sign the paper and Holden said "I don't like the looks of your face." He testified: "And he hit me by the side of my head, and I swung at him but I missed him. And he caught my arm and he fold it up behind me and then I fell and had to sign that paper." Appellant said he must have been talking to Detective Holden

"about an hour." (Tr. 61-68.) Appellant was apparently under the impression that the confession introduced against him was a written one (Tr. 70).

Appellant said that Holden had accused him of "this crime. But he [Holden] didn't say what the crime was or nothing" (Tr. 77). Against the advise of his counsel appellant testified that on the evening of May 30, the complaining witness had accused him of having relations with her and that a male friend of the complaining witness's mother had started to beat appellant at which point appellant had run out of the house. (Tr. 82-84.) Appellant also related where he had been in the early afternoon of May 30. When asked why he had made no effort to bring in as witnesses the people who were supposedly with him, he gave no satisfactory answer. (Tr. 85-90.)

As a rebuttal witness Detective Holden denied that he had ever struck appellant and that he had ever asked appellant to sign any piece of paper. He also denied having threatened or coerced appellant in any way (Tr. 90-92). Detective Joyce Platt, also a rebuttal witness, confirmed the testimony of Detective Holden regarding the circumstances of appellant's statement (Tr. 93-97).

STATUTE INVOLVED

Title 22, District of Columbia Code, Section 2801, provides:

> Whoever has carnal knowledge of a female forcibly and against her will, or carnally knows and abuses a female child under sixteen years of age, shall be imprisoned for not more than thirty years: *Provided*, That in any case of rape the jury may add to their verdict, if it be guilty, the words "with the death penalty," in which case the punishment shall be death by electrocution: *Provided further*, That if the jury fail to agree as to the punishment the verdict of guilty shall be received and the punishment shall be imprisonment as provided in this section.

SUMMARY OF ARGUMENT

I

Appellant's argument that the testimony of the complaining witness was not corroborated appears to be based on the assumption that the law requires there be independent corroboration of the fact of penetration. Such is not the law. Rather it is that there must be corroboration that the offense took place. Such corroboration was supplied not only by appellant's admissions but also by the testimony of the complaining witness' sister, an eye witness to the crime, as well as the medical examination of the complaining witness' genitalia.

II

Within 45 minutes of appellant's voluntary appearance at the Sex Squad office in connection with a complaint that he had carnal knowledge of an eleven-year-old girl, appellant had admitted he had had sexual relations with the girl (claiming that she had consented), had supplied the necessary information to complete the "lineup sheet" and papers for fingerprinting and photographing, and the papers had been completed, had confronted the girl and had heard her version of the incident and had repeated his version in the presence of her and her mother. When these facts had been related at a hearing outside the presence of the jury, appellant's trial counsel stated that he objected to the statements but did not give the ground therefor. The contention on appeal that the statements should have been excluded on the ground that appellant was not advised of his right to consult with a lawyer and that he did not have to make a statement are not supportable. The record does not reflect whether appellant was told he might consult with a lawyer; the police officer did not remember whether he told appellant he did not have to make a statement. It is well established that a police officer does not have the duty to in-

form an arrested person of these rights and that the fact that he does not do so is irrelevant to the admissibility of the statement.

ARGUMENT

I. The complaining witness' testimony about the commission of the crime was corroborated by other evidence besides appellant's confession.

(Tr. 17-27)

Appellant contends that without appellant's confession there was no corroboration of the complaining witness' testimony. This contention is without foundation in the record. Her testimony was corroborated primarily by the testimony of her sister and also by the testimony of the doctor who examined her on the evening of the offense. Appellant discounts the latter element of corroboration. He states that the doctor's testimony about irritation of the introitus vaginae does not necessarily connect appellant with the accusation made against him since the complaining witness had testified that she had had sexual relations with another boy on the same day.

Appellant's argument appears to be based on an assumption that the law requires independent corroborating evidence of actual penetration. Obviously this is not the state of the law. If it were, there could be no conviction in cases where the victim, whether married or unmarried, did not resist to the point of causing injury to her genitals and no emission occurred. Appellant suggest that the least the Government could have proved was "that the complaining witness was not a virgin and that somebody or something had in fact made penetration through the complaining witness' hymen at some time prior to the examination by the government doctor." Appellant's brief at 15. Suffice it to say that the integrity *vel non* of the witness' hymen would not be conclusive of the witness' virginity much less whether there had been sufficient penetration to complete the crime with which appellant

was charged. "The crime of rape is committed if it [the male organ] enters only the labia of the female organ." *Holmes* v. *United States*, 84 U.S. App. D.C. 168, 171 F.2d 1022 (1948). Appellant's implied argument that the witness' admission that she had intercourse with another boy on the same day destroys whatever corroborative effect the traumatic irritation of the introitus might have is without merit. No doubt this admission did weaken the corroborative effect of the trauma. But this went to the weight of the evidence, a matter for the jury to decide.

The testimony of the complaining witness was corroborated by that of her sister, Bernadette Veney. The latter said that she had gone to her mother's bedroom, seen her sister on the bed with her underpants pulled down and appellant on top of her. She testified that appellant was wearing his underpants, then that he was wearing his underpants and pants and that his trousers were open. She said that she saw something in the opening of his trousers and that she remembered what it was but questions designed to elicit a specific statement on this were unproductive and the question was never answered. Bernadette said that she had struck appellant across the back with a stick and that he had got up from the bed and left. (Tr. 17-27.) Her testimony agrees in all substantials with that of the complaining witness. In regard to this testimony, appellant says, [The complaining witness'] sister, an eye witness, does not confirm that there was any penetration, or, indeed, does not even confirm that appellant's private parts were ever in view." Appellant's brief at 14. As noted above, this argument seems to presuppose that the fact of actual penetration must be corroborated by some evidence independent of the testimony of the complaining witness. Appellant cites no authority for this proposition and it is submitted that none can be found. The corroboration required in rape and carnal knowledge is of the commission of the crime itself, not of this particular element of the crime. *Cf. Ewing* v. *United States*, 77 U.S. App. D.C. 14, 135 F.2d

633 (1942), *cert. denied*, 318 U.S. 776 (1943); *Kidwell* v. *United States*, 38 App. D.C. 566 (1912).

II. Appellant's admission that he had had intercourse with the complaining witness was properly received into evidence.

The relevant facts upon which rests the admissibility of appellant's statement are few. They are contained in the testimony of Detective Holden. When it appeared that he was about to testify to statements made by appellant at Police Headquarters, appellant asked for a hearing outside the presence of the jury. Detective Holden was the only one who testified at this hearing. (Tr. 37-43.) At the end of his testimony appellant's counsel asked for a bench conference and for permission to say something off the record. When the discussion off the record had concluded, counsel said: "May the record reflect that I have an objection to the admission?" The Court replied, "Certainly." (Tr. 43.)

Briefly, Detective Holden's testimony was that appellant had been notified to come to the Sex Squad office and that he had appeared there voluntarily at about 10:15 a.m., June 1, 1963; that he had told appellant of the complaint against him and appellant denied having done anything to the girl; that he told appellant there were witnesses who had seen him and appellant related facts about the incident and claimed that the girl had consented to having intercourse with him; while this conversation was occurring appellant was being processed for the papers necessary for lineup, fingerprinting and photographing.[1] About 20 minutes after his appearance at the Sex Squad office appellant made his admission and was then confronted with the complaining witness. At this confrontation the witness told her version of the

[1] This testimony was later corroborated and amplified by Detective Joyce Platt who was a rebuttal witness for the Government. Her testimony on this matter is found at pages 94-96 of the transcript.

incident and appellant repeated his version. At 10:56 appellant was taken from the Sex Squad office to the cell block. Holden was not asked whether he had informed appellant that he could consult with a lawyer. After cross-examination he was asked by the Court *inter alia* whether appellant had been promised anything, whether he had been told why he was called to the Sex Squad office, and "Did you tell him whether he had to make a statement or not?" Holden answered to the last question, "I don't recall that, Your Honor." (Tr. 42.)

Holden's testimony makes clear that he was merely asking routine questions of what appellant knew about the charge which had been made against him and what, if anything, he had to say in light of the evidence against him.

Appellant relies on *Spriggs* v. *United States*, No. 17,962, decided June 19, 1964, and attempts to distinguish the instant case from *Ramey* v. *United States*, No. 17,774, decided June 25, 1964. Appellee submits that, while the facts of each case as reported are similar, the instant case more resembles *Ramey* than *Spriggs*. Here, as in *Ramey*, the statements were "forthcoming within a few minutes after appellant's arrest and promptly in response to routine inquiries as to what had happened." Here, as in *Ramey*, appellant urges on appeal that the statements should be excluded because he was not advised that he did not have to make a statement, that any statement could be used against him and that he had a right to consult a lawyer. In *Ramey* the policemen were not asked whether they had given these warnings to the appellant and the transcript, all of which had not been transcribed, reflected no objection to the admission of the statement, at least not on the ground raised on appeal. The Court declined to reverse on this ground. In the instant case the police officer was not asked whether he had advised appellant that he had a right to consult an attorney. When asked if he had advised him that he had the right not to make a statement, he replied, "I don't remember that." (Tr. 42.) In this case also appellant's counsel

did not object to the admission on the grounds now raised on appeal. He said merely, "May the record reflect that I have an objection to the admission?" (Tr. 43.) Rule 51, Fed. R. Crim. P., provides, in pertinent part, ". . . it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which he desires the court to take or his objection to the action of the court *and the grounds therefor* . . . ." (Emphasis supplied.) It is clear that the "objection" of appellant's trial counsel to the admission of the statements did not present the grounds of the objection now raised on appeal and thus did not comply with the Rule.

Appellant contends that the fact that while he was considered to be under arrest by the police, he was not notified to that effect nor was he advised of his rights should alone be "sufficient to justify the exclusion of the oral confession." Appellant's brief at 11. The courts have never ruled that it is the duty of the police to advise a defendant of his rights, much less that a statement should be excluded because such advice was not given. On the contrary, it is well established that the police have no such duty and that such statements are admissible. *Himmelfarb* v. *United States*, 175 F.2d 924 (9th Cir. 1949) and cases cited therein at 938, fn. 6; *Powers* v. *United States*, 223 U.S. 303, 313 (1912); *Wilson* v. *United States*, 162 U.S. 613 (1896).

Appellant's comparison to the facts of this case to those found in *Greenwell* v. *United States*, No. 18,193, decided August 13, 1964, and *Carter* v. *United States*, 102 U.S. App. D.C. 227, 252 F.2d 608 (1957) is far-fetched.

In *Greenwell* the police arrested appellant at a movie theater and, instead of taking him to be "booked," drove him a few blocks, parked under a street lamp, conducted an interview, searched his house, and then took him to local police headquarters. In *Carter* the appellant was taken into custody at about 8:00 p.m., taken to the scene

of the crime, taken to headquarters, given some tests, was "booked," was driven to the morgue, was returned to police headquarters where he was further questioned, and finally made some statements at about 12:30 a.m. In the instant case appellant appeared voluntarily at the Sex Squad office at about 10:15 a.m. By 10:56 the necessary papers had been completed, appellant had admitted the act, claiming that the girl had consented, had been confronted by the girl who repeated her version and appellant had repeated his version. It is clear that appellant's statements were voluntarily proffered when he was informed of the charge against him and was confronted with the evidence against him.

CONCLUSION

Wherefore, it is respectfully submitted that the judgment of the District Court should be affirmed.

DAVID C. ACHESON,
United States Attorney.

FRANK Q. NEBEKER,
ROBERT B. NORRIS,
DANIEL J. MCTAGUE,
Assistant United States Attorneys.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1964 749702 383